

REMARKS

Entry of the foregoing amendments after final rejection as narrowing the issues and presenting the claims in condition for allowance or in better condition for appeal is respectfully solicited. The foregoing amendments after final rejection have not been earlier presented because of the response to arguments in the action and because the finality of the rejection must be withdrawn.

Claims 7-11, 13-17 and 19-29 are pending and at issue in the application with claims 7, 13 and 19 being independent claims. As a result, 3 independent claims remain in the application as previously paid for, and 21 total claims remain in the application as previously paid for. The applicants believe no additional fee is due. However, the Commissioner is hereby authorized to charge any deficiency in the amount enclosed or any additional fees which may be required under 37 CFR 1.16 or 1.17 to deposit account number 13- 2855. Reconsideration and withdrawal of the rejections in view of the remarks below is respectfully requested.

Claims 7, 8, 11, 19-21, 24-27 and 29 were rejected as anticipated under 35 U.S.C. §102(e) by Durcan et al. (U.S. Patent No. 6,395,600). Claims 9, 10, 22, 23 and 28 were rejected as unpatentable under 35 U.S.C. §103(a) over Durcan et al., and claims 13-17 were rejected as unpatentable over Durcan et al. in view of Lee et al. (U.S. Patent No. 6,656,789). The applicant respectfully traverse these rejections.

As an initial matter, the action has not considered the applicants' remarks regarding the rejection of claims 13-17 as unpatentable over Durcan et al. in view of Lee et al., and the applicants' Statement of Common Ownership filed on November 22, 2006 with the "Response to Non-Final Official Action Dated August 25, 2006". The response and the Statement of Common Ownership clearly established that Lee et al. is subject matter developed by another person that qualifies as a 35 USC 102(e) reference, and that both Lee et al. and the instant application were commonly owned by Hynix Semiconductor Inc. at the time of the invention of the claimed subject matter. As such, it is clear 35 U.S.C. §103(c) requires that Lee et al. cannot preclude patentability under 35 U.S.C. §103. However, the present action continues to reject claims 13-17 based on Lee et al., and does not address the Statement of Common Ownership or the remarks associated therewith in any manner. As such, the finality of the present action is improper, because the previous rejection of claims

13-17 as unpatentable over Durcan et al. in view of Lee et al. was improper and the action has not fully considered the applicants' remarks regarding the same.

As a further matter, the applicants clearly demonstrated that the previous action provided no grounds for rejecting claims 14-16 as anticipated by Durcan et al. In particular, while the previous action indicated that claims 14-16 were rejected as anticipated by Durcan et al., there was no similar rejection of claim 13 from which claims 14-16 depend, and no reasons were provided for rejecting claims 14-16 as anticipated. However, the present action continues to reject claims 14-16 as anticipated by Durcan et al., but still does not provide any grounds for this rejection, much less a rejection of claim 13 as anticipated by Durcan et al. which is required for a rejection of claim 14-16. As such, the finality of the present action is improper, because the previous rejection of claims 14-16 as anticipated by Durcan et al. was improper and the action has not fully considered the applicants' remarks regarding the same.

For at least these reasons, the rejections of claims 13-17 in the non-final action of August 22, 2006 were clearly improper, and the finality of the present action must be withdrawn. The action has not provided any further basis for the rejections of claims 13-17.

Turning to the remaining rejections, the applicants respectfully submit that claims 7, 8, 11, 19-21, 24-27 and 29 are not anticipated by Durcan et al. The action does not establish a *prima facie* case of anticipation, because Durcan et al. fails to disclose all of the limitations of claims 7, 8, 11, 19-21, 24-27 and 29.

In particular, Durcan et al. fails to disclose contact pads formed between the lower electrodes and the capacitor plugs, where the contact pads are formed over the capacitor plugs. To the extent the action relies on reference numeral 1 as disclosing the recited contact pads, the applicants reiterate that reference numeral 1 only refers to the extent of the conductive layer's 24 encroachment towards contact sites 5. (See e.g., column 5, lines 24-26). Nonetheless, to the extent the action refers to the conductive layer 24 that are formed around the contact sites 5 or to the conductive layer 33 that is formed over the contact sites 5, Durcan et al. does not disclose the recited contact pads. As clearly seen in Figs. 6A, 6B, 7 and 8, the conductive layer 24 is only formed around the contact sites 5 (cited in the action as the recited "capacitor plugs"), and not over the contact sites 5. As such, the conductive layer 24 cannot be the recited contact pads which are formed over the capacitor plugs. On the other hand, as clearly seen in Fig. 8, while the conductive layer 33 is formed over the contact

sites 5, the conductive layer 33 is not formed between the contact sites 5 and the electrode 20 (cited in the action as the recited “lower electrode”). As such, the conductive layer 33 cannot be the recited contact pads which are formed between the lower electrodes and the capacitor plugs.

Regarding claims 7, 8 and 11, Durcan et al. fails to disclose that contact pads are disposed at a lower plane of at least one of the paired lower electrodes. To the extent the action relies upon turning the structure of Durcan et al. “up side down” (see action page 12), the applicants note that if the structure of Durcan et al. were turned upside down, the disclosure within Durcan et al. relied upon in the action as disclosing contact pads (i.e., reference numeral 1) would no longer be formed over the contact sites 5. As a result, the structure of Durcan et al. fails to meet all the limitations of claims 7, 8 and 11, regardless of its orientation.

It is clear that a claim is anticipated only if each and every element as set forth in the claim is found in a single prior art reference. See MPEP 2131. Accordingly, claims 7, 8, 11, 19-21, 24-27 and 29 are not anticipated by Durcan et al., because Durcan et al. does not teach or suggest all the limitations of claims 7, 8, 11, 19-21, 24-27 and 29, and the grounds for rejection of claims 7, 8, 11, 19-21, 24-27 and 29 as asserted in the action cannot be sustained.

The applicants respectfully submit that claims 9, 10, 22, 23 and 28 are not rendered obvious over Durcan et al. The action does not establish a *prima facie* case of obviousness, because Durcan et al. fails to disclose all of the limitations of claims 9, 10, 22, 23 and 28. As established above, Durcan et al. fails to disclose or suggest capacitor plugs formed within a predetermined interval interleaved between two bit lines, and contact pads formed between the lower electrodes and the capacitor plugs. Regarding claims 9 and 10, Durcan et al. further fails to disclose or suggest that contact pads are disposed at a lower plane of at least one of the paired lower electrodes.

It is clear that a claim cannot be rendered obvious where all the limitations of a claimed combination are not taught or suggested by the prior art. See *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). See also MPEP 2143.03. Accordingly, claims 9, 10, 22, 23 and 28 are not rendered obvious over Durcan et al., because Durcan et al. does not teach or suggest all the limitations of claims 9, 10, 22, 23 and 28, and the grounds for rejection of claims 9, 10, 22, 23 and 28 as asserted in the action cannot be sustained.

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For the foregoing reasons, reconsideration and withdrawal of the rejections of the claims and allowance thereof are respectfully requested. Should the examiner wish to discuss the foregoing, or any matter of form, in an effort to advance this application towards allowance, the examiner is urged to telephone the undersigned at the indicated number.

Respectfully submitted,

MARSHALL, GERSTEIN & BORUN LLP
233 S. Wacker Drive
6300 Sears Tower
Chicago, Illinois 60606-6357
(312) 474-6300

By: _____

Aaron M. Peters
Registration No.: 48,801
Attorney for Applicants

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